



UNITED STATES DEPARTMENT OF COMMERCE  
The Under Secretary for International Trade  
Washington, D.C. 20230

MEMORANDUM TO: Marc Leland

FROM: Lionel H. Olmer *LHO*

SUBJECT: Friday SIG-IEP meeting on the Export  
Administration Act (EAA)

At a meeting held on September 20, Under Secretaries (or their representatives) from all interested agencies agreed that the SIG-IEP should consider the seven EAA issues which were the subject of that meeting. As background material for Friday's SIG-IEP meeting, I have attached descriptions of the primary differences among the various bills on each of the seven issues.

At the SIG-IEP meeting, I will present the options discussed at the September 20 meeting in order to allow the SIG-IEP to determine the Administration's position on these issues. To the extent possible, the SIG-IEP should decide as many of these issues as possible so as to enable our legislative strategy to develop. Remaining issues need to be resolved no later than Monday, September 26, because this legislation may well be considered by Congress next week.



CONTRACT SANCTITY  
(FOREIGN POLICY CONTROLS)

Primary Differences Between EAA Bills

Present Law -- The President may impose export controls that affect existing contracts. The Commodity Futures Trading Act, however, provides contract sanctity for agricultural exports for a period of 270 days after imposition of the controls, unless there is a declared national emergency or state of war.

Administration Bill -- Protects existing contracts, the terms of which require delivery within 270 days, from the imposition of controls, unless the President determines that the overriding national interest requires such exports be prohibited.

Senate Bill -- All contracts entered into before the imposition of foreign policy controls are protected, with no Presidential "escape clause."

House Bill -- All contracts entered into before controls are imposed are protected, except when the controls relate directly and significantly to imminent or actual acts of aggression, international terrorism, gross violation of human rights or nuclear weapons tests.

## LICENSING OF COCOM TRADE

### Primary Differences Between EAA Bills

Present Law -- COCOM countries receive no special statutory treatment outside of exception from provisions relating to export of crime control and detection instruments.

Administration Bill -- The Administration bill retains the existing law and does not give COCOM countries special licensing treatment. The Administration bill does, however, declare that it is our policy to develop licensing mechanisms to minimize the burdens placed on free world trade.

Senate Bill -- Requires the issuance of only general licenses for exports of multilaterally controlled items to COCOM countries unless the item is on the Militarily Critical Technology List.

House Bill -- A validated license can no longer be required for exports to a country which maintains export controls cooperatively with the United States. A validated license can be required for exports to end-users identified by regulation, and the Secretary may require any exporter to notify the Department of exports of controlled items.

## FOREIGN AVAILABILITY

### Primary Differences Between EAA Bills

Present Law -- When the Secretary of Commerce determines that controlled goods and technology are available from foreign sources, he must decontrol the items and issue an export license, unless the President decides that removing controls would be detrimental to the national security, or are needed to protect our foreign policy interests.

Administration Bill -- Amends the definition of foreign availability by substituting the words "comparable quality" for the words "sufficient quality." Thus, the definition is consistent throughout the statute.

Senate Bill -- Adopts the change proposed by the Administration bill. For foreign policy controls, requires decontrol if foreign availability is present and not eliminated within 6 months, unless Secretary determines that maintaining control would still serve its purpose. Requires that representation of foreign availability by an applicant shall be accepted unless contradicted by reliable evidence ("burden shifting" provision). The bill also suggests standards for determining if availability exists such as cost, reliability, availability of spare parts, and durability.

House Bill -- For national security controls, requires decontrol if foreign availability is present and not eliminated within 6 months. Contains "burden shifting" provision similar to Senate.

NATIONAL SECURITY CONTROLS  
UNILATERAL CONTROLS

Primary Differences Between EAA Bills

Present Law -- No limitations are placed on the authority to unilaterally control the export of goods or technology.

Administration Bill -- Makes no change to existing authority.

Senate Bill -- Makes no change to existing authority.

House Bill -- Unilaterally controlled national security items that have been approved to a country group for a one-year period must be decontrolled to that country group, but a license can be required for export of that item to end-users identified in regulations.

EXTRATERRITORIALITY  
(FOREIGN POLICY)

Primary Differences Between EAA Bills

Present Law -- Permits extending export controls to U.S. subsidiaries, re-exports of U.S. products or exports of foreign origin products of U.S. technology.

Administration Bill -- Makes no change to the present authority.

Senate Bill -- Makes no change to the present authority, although Senator Percy is expected to introduce amendment limiting use of extraterritorial controls to 45 days without Congressional approval.

House Bill -- Authority for the imposition of foreign policy controls is limited to goods or technology "produced" in the U.S. Controls applied extraterritorially require prior approval by Congress by Joint Resolution.

AGRICULTURE

Primary Differences Between EAA Bills

Present Law -- Short supply controls require concurrence of Secretary of Agriculture. Foreign policy and short supply controls can be disapproved within 30 days by concurrent resolution of Congress (now unconstitutional). Existing agricultural contracts cannot be affected by any export controls for 270 days unless President declares national emergency or Congress declares war. Reimbursement provided for losses caused by imposition of export controls, if control not part of total embargo and affected nation purchased over 3% of total U.S. exports of controlled export in preceding year.

Administration Bill -- No change.

Senate Bill -- Precludes national security controls on agricultural products. Amendment is expected which would preclude foreign policy controls, except in cases of total embargo, unless there is prior Congressional approval (Senators Percy and Dixon).

House Bill -- Foreign policy and short supply controls effective for only 60 days unless extended by joint resolution of Congress.

CONGRESSIONAL CONSULTATION  
(FOREIGN POLICY CONTROLS)

Primary Differences Between EAA Bills

Present Law -- Before imposing foreign policy controls the President shall "in every possible instance" consult with Congress. Whenever controls are imposed, expanded or extended the President shall immediately report on the actions taken to Congress.

Administration Bill -- Makes no change to existing authority.

Senate Bill -- Continues to require the President to consult with Congress "in every possible instance" before imposing foreign policy export controls. The bill, however, requires that a report on the controls be submitted to Congress before the controls are imposed, expanded or extended. Senator Percy may offer an amendment specifying consultations with the Senate Committees on Banking and Foreign Relations and House Foreign Affairs Committee.

House Bill -- Consultation with the House Foreign Affairs Committee and the Senate Banking Committee and a report to Congress on the controls is required before foreign policy controls are imposed, expanded or extended.